



[4830-01-p]

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 8858**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).

**DATES:** Written comments should be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue N.W., Washington, DC 20224.

**FOR FURTHER INFORMATION:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202)317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue N.W., Washington, DC

20224, or through the Internet at Martha.R.Brinson@irs.gov.

**SUPPLEMENTARY INFORMATION:**

Title: Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).

OMB Number: 1545-1910

Form Number: Form 8858 and Schedule M (Form 8858)

Abstract: Form 8858 and Schedule M are used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively. These forms also now implement the relevant provisions of PL 115-97 (Schedule M (Form 8858)). Section 14302 of PL 115-97 (IRC 904(d)(1)(B)--FTC category for foreign branch income) requires additional reporting by a foreign branch (FB) owned by a U.S. person.

**Form 8858:**

Current Actions: (1) On page 1, we changed the title to include foreign branches as Form 8858 will be used to collect information from foreign branches as required by new sections 91 and 904(d)(1)(B). References to foreign branches are added throughout the Form 8858, and foreign disregarded entities and foreign branches are abbreviated as FDE and FB; (2) Also, on page 1, for purposes of filtering, we added checkboxes to identify whether the FB or FDE is owned by a U.S. person, controlled

foreign corporation (CFC), or controlled foreign partnership (CFP), and whether this is the initial or final Form 8858 filed;

(3) On page 2, Schedule C, we added several additional income line items, and one for income tax expense, to correspond to items reflected on Form 1118, as modified, for FTC reporting by FBs pursuant to section 14302 of PL 115-97; (4) Also, on page 2, Schedule C-1, we made changes requested by CC:INTL to clarify reporting of gains and losses on remittances by FDEs and FBs; (5) On page 3, Schedule G, we deleted old questions 4 and 5a to 5c, and added new questions 6 to 8, and 10 to 13. Questions 6 and 7 were added to address base erosion under sections 59A(d) and 59(c)(2). Question 8 was added to identify whether the FB or FDE was a qualified business unit under IRC 989(a), which will enhance reporting of FB activities and remittances under IRC 987. Questions 10 to 13 are modifications of old questions 4 and 5a to 5c, regarding dual consolidated losses, to provide more transparent and accurate reporting of DCLs incurred by FBs or FDEs of a U.S. owner; (6) On page 4, we added Schedule I, Transferred Loss Amounts, which will indicate whether section 91 (section 14102 of PL 115-97) applies. Also, Schedule I will indicate whether a domestic corporation transferred foreign branch assets to a foreign corporation, which would invoke section 91, and require the inclusion of the transferred loss

amount into income; (7) Also, on page 4, we added Schedule J, Income Taxes Paid or Accrued, which will provide additional information on the foreign taxes paid or accrued by the FB or FDE, converted to U.S. dollars and classified into separate FTC categories, including the new category under section 904(d)(1)(B) (section 14302 of PL 115-97).

**Schedule M (Form 8858):**

A third column heading was added to report transactions of an FDE or FB of a U.S. tax owner with corresponding changes to columns (a)-(e). The instructions will clarify that the Schedule M (Form 8858) must be completed and attached to the Form 8858 to report transactions between the FB or FDE and the filer of Form 8858 or other related entity, regardless of the tax owner of the FB or FDE.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

**Form 8858:**

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 35.99 hours.

Estimated Total Annual Burden Hours: 719,800 hours.

**Schedule M (Form 8858):**

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 24.75 hours.

Estimated Total Annual Burden Hours: 198,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways

to minimize the burden of the collection of information on  
or other forms of information technology; and (e) estimates of  
capital or start-up costs and costs of operation, maintenance,  
and purchase of services to provide information.

Approved: June 5, 2018.

**Laurie Brimmer,**

Senior Tax Analyst.

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